

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Andrew Ridge	Team: Squad #5	CCRB Case #: 201906075	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 05/28/2019 3:40 PM	Location of Incident: [REDACTED]	Precinct: 123	18 Mo. SOL 11/28/2020	EO SOL 7/15/2021	
Date/Time CV Reported Wed, 07/03/2019 3:00 PM	CV Reported At: CCRB	How CV Reported: Mail	Date/Time Received at CCRB Mon, 07/08/2019 4:35 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. LT Daniel Tovar	00000	946338	123 PCT
2. POM Joshua Petersen	14629	964212	123 PCT
3. POM Christophe Gilmore	05733	934930	123 PCT
4. POM Thomas Matson	23495	957822	123 PCT
5. SGT Kappa Farid	467	925259	123 PCT
6. POM John Mavridis	18200	943536	123 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT Daniel Tovar	Abuse: Lieutenant Daniel Tovar threatened to arrest § 87(2)(b) [REDACTED]	[REDACTED]
B.POM Christophe Gilmore	Force: Police Officer Christopher Gilmore used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
C.POM John Mavridis	Force: Police Officer John Mavridis used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
D.POM Joshua Petersen	Force: Police Officer Joshua Petersen used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
E.POM Thomas Matson	Force: Police Officer Thomas Matson used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
F.SGT Kappa Farid	Abuse: Sergeant Kappa Farid threatened to arrest § 87(2)(b) [REDACTED]	[REDACTED]

Case Summary

On July 3, 2019, § 87(2)(b) an attorney, filed this complaint by mail on behalf of herself, her employee § 87(2)(b) and her client § 87(2)(b)

On May 28, 2019, sometime before 3:40 p.m., § 87(2)(b) and § 87(2)(b) arrived at the § 87(2)(b) in Staten Island so that § 87(2)(b) acting as § 87(2)(b)'s criminal attorney, could file a domestic violence report on his behalf. After refusing to allow § 87(2)(b) to file the report, Lieutenant Daniel Tovar of the 123rd Precinct threatened to arrest § 87(2)(b) (**Allegation A: Abuse of Authority**, § 87(2)(g)) and then directed officers to take her into custody. During the apprehension, Police Officers Christopher Gilmore, John Mavridis, Joshua Petersen, and Thomas Matson, all of the 123rd Precinct, allegedly pushed § 87(2)(b) against a desk (**Allegations B-D: Force**, § 87(2)(g)) (**Allegation E: Force, miscellaneous** – § 87(2)(g)) Following § 87(2)(b)'s apprehension, Sergeant Kappa Farid of the 123rd Precinct allegedly threatened to arrest § 87(2)(b) (**Allegation F: Abuse of Authority**, § 87(2)(g))

PO Petersen ultimately issued § 87(2)(b) two summonses: one for trespassing and one for disorderly conduct.

The investigation obtained BWC footage from PO Matson, PO Petersen, and PO Borik (BR01-BR03). Lt. Tovar was dressed in plainclothes and assigned to administrative duties inside the stationhouse on the date of the incident, so he did not have a body-worn camera. All references to video evidence below refer to the time stamp in the video player, and not the on-screen clock embedded in the video itself.

This case was reassigned from Inv. Andrew Ridge to IM Daniel Giansante following Inv. Ridge's departure from the agency on July 17, 2020.

Findings and Recommendations

Allegation (A) Abuse of Authority: Lieutenant Daniel Tovar threatened to arrest § 87(2)(b)

It is undisputed that Lt. Tovar threatened to arrest § 87(2)(b) but the circumstances under which he threatened her with arrest are disputed.

On May 20, 2019, officers from the 123rd Precinct arrested § 87(2)(b) for allegedly assaulting a relative with a knife (this incident is detailed in CCRB case #201906078). § 87(2)(b) believed that the relative whom § 87(2)(b) allegedly assaulted also should have been arrested during the incident, and she felt that § 87(2)(b) was not given the opportunity to file a report of domestic violence against that relative during the incident because § 87(2)(b) does not speak English.

§ 87(2)(b) recounted that she spoke to someone at the reception desk upon entering the stationhouse, and that she asked to speak to Captain Timothy Wilson, who was the commanding officer of the 123rd Precinct at the time (BR04). The receptionist told § 87(2)(b) that she could speak to Lt. Tovar, and § 87(2)(b) waited in the civilian waiting area with § 87(2)(b) and § 87(2)(b). The civilian waiting area was a small vestibule between the stationhouse's front door and a second set of doors leading to the reception area. When Lt. Tovar arrived in the civilian waiting area, § 87(2)(b) explained her wish to file the domestic violence report. Lt. Tovar went deeper into the stationhouse to investigate while § 87(2)(b) waited in the front. After a long time, Lt. Tovar returned and told § 87(2)(b) that he was not going to amend the police report. He explained that she would need to call the Assistant District Attorney assigned to the case, and he provided her with the phone number for the ADA. § 87(2)(b) briefly went outside to call the ADA, but she was unable to reach her. § 87(2)(b) believed Lt. Tovar gave her an incorrect phone number for the

ADA, so she asked the receptionist if she could now speak with Capt. Wilson. The receptionist informed § 87(2)(b) that she would first need to speak with Lt. Tovar. After waiting for some time, § 87(2)(b) again spoke with Lt. Tovar, at the doors leading from the vestibule to the reception area. § 87(2)(b) explained her issue in getting in contact with the ADA, and Lt. Tovar informed her that this was the best information that he had. § 87(2)(b) asked to speak with Capt. Wilson since Lt. Tovar could not resolve her issue. She told Lt. Tovar that she would leave if Capt. Wilson could not address her problem. Lt. Tovar said, “If you insist on seeing Capt. Wilson, I can arrest you.” § 87(2)(b) asked Lt. Tovar on what grounds he could do this. Lt. Tovar had no response beyond saying, “Now I’ll give you 30 seconds to leave. If you don’t leave, I’m gonna arrest you now.” This was the first time that Lt. Tovar told § 87(2)(b) to leave. § 87(2)(b) turned to § 87(2)(b) and § 87(2)(b) who were sitting in the civilian waiting area, to tell them what Lt. Tovar said and ask whether they should leave. § 87(2)(b) did not get the chance to fully ask § 87(2)(b) this because at this time Lt. Tovar physically apprehended her and placed her in custody.

§ 87(2)(b) recounted that she sat in the vestibule as Lt. Tovar spoke to § 87(2)(b) but that she only partially listened to the conversation, largely waited for § 87(2)(b) to tell her something to translate for § 87(2)(b) and also carried on a conversation with § 87(2)(b) (BR05). During the second conversation between Lt. Tovar and § 87(2)(b) heard § 87(2)(b) reiterate that she wanted to file a report and wanted to speak to someone else, and she heard Lt. Tovar tell § 87(2)(b) in sum and substance, “I will give you 30 seconds and if you don’t leave, you will be arrested.” § 87(2)(b) did not testify to hearing Lt. Tovar say, “If you insist on seeing Captain Wilson, I can arrest you.”

§ 87(2)(b) recounted that throughout the course of the incident, § 87(2)(b) and Lt. Tovar used regular tones of voice to speak with each other (BR06). § 87(2)(b) did not provide testimony regarding the content of the conversation because § 87(2)(b) only understands a few English words.

Lt. Tovar admitted that he threatened to arrest § 87(2)(b) if she refused to leave the stationhouse, but he provided a differing account of her actions at the stationhouse that day (BR07). He recounted that he became aware of § 87(2)(b)’s presence at the stationhouse when the desk sergeant told him that she had been demanding to speak to him about creating a cross-complaint for § 87(2)(b). In addition, Sergeant Gregory Faljean informed Lt. Tovar that he had also spoken to § 87(2)(b) and that she had already been at the stationhouse for more than two hours. Lt. Tovar also learned that § 87(2)(b) had also attempted to get the staff in the complaint room (aka the “124 room”) to create a complaint report for § 87(2)(b). Lt. Tovar met with § 87(2)(b) at the vestibule and spoke to her about her reason for coming to the stationhouse. He then called § 87(2)(b) who was handling the criminal case resulting from § 87(2)(b)’s arrest. § 87(2)(b) informed Lt. Tovar that she had already spoken to § 87(2)(b) about the matter. § 87(2)(b) had explained to § 87(2)(b) the steps she should take within the ongoing criminal case with regard to § 87(2)(b)’s claim that he was also a victim. § 87(2)(b) told § 87(2)(b) that generating a new crime report at the precinct-level was not appropriate, and that a victim advocate had been assigned to § 87(2)(b).

Lt. Tovar returned to the vestibule doorway, recounted his conversation with § 87(2)(b) to § 87(2)(b) and gave her the ADA’s name and phone number. He confirmed to her that the precinct would not be preparing a cross-complaint for § 87(2)(b) began yelling. She continued to demand that the precinct prepare a complaint for § 87(2)(b) and she insisted on speaking to Capt. Wilson. Lt. Tovar eventually directed § 87(2)(b) to leave the stationhouse. Lt. Tovar estimated that his interaction with § 87(2)(b) from first meeting her to eventually directing her to leave, lasted approximately 40 minutes. Lt. Tovar directed § 87(2)(b) to leave twice during the conversation, and he explained that she would be trespassing if she refused to leave. § 87(2)(b)

continued to refuse to leave. Lt. Tovar directed her to leave a third time, told her she would be subject to arrest if she continued to refuse, and told her that she had ten seconds to leave. Lt. Tovar gave her that time frame because he thought she was not taking the situation seriously. § 87(2)(b) responded by standing still and saying, “I’m not leaving,” at which point Lt. Tovar began to arrest her.

Sgt. Farid was present at the incident in which § 87(2)(b) was arrested. On the date of the incident at the stationhouse, he was scheduled to begin working as the desk sergeant shortly before § 87(2)(b) was taken into custody, but he remained in the muster room and did not immediately take his position at the desk at the direction of Lt. Tovar. He witnessed portions of § 87(2)(b)’s interactions with Lt. Tovar and other officers, but he did not see the entire interaction (BR08). Sgt. Farid confirmed that he heard someone instruct § 87(2)(b) to leave at a time when he was not able to see the ongoing interaction, that he heard officers telling her not to come farther into the stationhouse, and that she was yelling in response. He also recounted witnessing Lt. Tovar threatening to arrest § 87(2)(b) if she did not comply, shortly before officers took her into custody.

Throughout his testimony, Sgt. Farid described the interaction as taking place not in the vestibule doorway, but at a metal gate slightly farther inside the stationhouse through which members of the public were not allowed to move. He also recounted that a portion of § 87(2)(b)’s conflict with officers involved her physical position at that gate and whether she could cross it. It should be noted that Sgt. Farid was not interviewed until nearly ten months after the incident, and that throughout his CCRB interview he amended or updated his account as his recollection wavered. As Lt. Tovar and the civilians all described the interaction between Lt. Tovar and § 87(2)(b) as taking place at the vestibule door, the investigation did not credit Sgt. Farid’s recollection regarding the metal gate.

None of the BWC clips captured the dispute between § 87(2)(b) and Lt. Tovar, as all three clips did not begin until after Lt. Tovar began to apprehend her. The investigation learned from Lt. Tovar that the stationhouse’s current CCTV recording system was being installed at the time of the incident. Lt. Tovar recounted that, at some point after the incident, he personally attempted to retrieve the footage himself because he was not sure if the cameras were operational on the date of the incident, and he found that there indeed was no extant footage from that date. Regardless, § 87(2)(b) filed the complaint more than 30 days after the incident, which is the retention period for footage from stationhouse security cameras. As a result, the investigation could not request that footage from the NYPD and would not have been able to obtain it.

As mentioned above, § 87(2)(b) was ultimately issued summonses for trespass and disorderly conduct.

Although it is clear that Lt. Tovar did threaten to arrest § 87(2)(b) the investigation could not determine the precise circumstances under which he did so. In Lt. Tovar’s account, he instructed § 87(2)(b) to leave multiple times before explicitly stating that she would be trespassing if she continued to refuse to leave, and he gave her a final warning with time to make a decision. In § 87(2)(b)’s account, Lt. Tovar threatened to arrest her even before he first directed her to leave, and he moved to arrest her with such speed that she had no chance to comply. Owing to the conflicting statements and the lack of additional evidence, the investigation was unable to overcome the contradiction.

New York State Penal Law §140.05 states, “A person is guilty of trespass when she knowingly enters or remains unlawfully in or upon premises” (BR09).

§ 87(2)(b), § 87(2)(g)

Allegation (B) Force: Police Officer Christopher Gilmore used physical force against

§ 87(2)(b)

Allegation (C) Force: Police Officer John Mavridis used physical force against

§ 87(2)(b)

Allegation (D) Force: Police Officer Joshua Petersen used physical force against

§ 87(2)(b)

Allegation (E) Force: Police Officer Thomas Matson used physical force against

§ 87(2)(b)

§ 87(2)(b) recounted that Lt. Tovar began apprehending her by grabbing her left arm and pulling her into the area surrounding the reception desk. Lt. Tovar called out to other officers for help, and PO Gilmore, PO Mavridis, PO Petersen, and PO Matson grabbed § 87(2)(b)'s arms and moved her toward the reception desk. As soon as these officers grabbed § 87(2)(b) Lt. Tovar released his grasp of § 87(2)(b)'s arm. After this, the officers "pushed" § 87(2)(b). In her initial interview, § 87(2)(b) did not fully describe what she meant by "pushed." In a follow-up phone statement, § 87(2)(b) described the actions of these officers in greater detail (BR10). The officers grabbed § 87(2)(b)'s arms, back, and shoulders and walked her to the desk. Despite the fact that § 87(2)(b) did not move her body as the officers brought her to the desk, they told her to stop resisting. The officers forcefully used open palms to push § 87(2)(b) against the desk, which caused her abdomen to make contact with the desk. § 87(2)(b) was unsure whether she sustained injuries from the officers pushing her against the reception desk. The officers handcuffed § 87(2)(b) and then brought her to the main desk located deeper in the stationhouse so that she could be issued summonses.

§ 87(2)(b) recounted that she remained seated as Lt. Tovar apprehended § 87(2)(b). Initially, the door between the civilian waiting area and the rest of the stationhouse was open, but it shut behind Lt. Tovar as he brought § 87(2)(b) deeper into the stationhouse. § 87(2)(b) could only see what transpired after this through a small window in the door. § 87(2)(b) saw the officers place § 87(2)(b)'s arms behind her back, but she did not see them push her with open palms. § 87(2)(b) moved her shoulders back and forth but was otherwise unable to move her body because the officers held onto her. § 87(2)(b) recounted that § 87(2)(b) did not resist being placed in handcuffs and that he never saw the officers push her against a desk. However, § 87(2)(b) was also in the vestibule during this time, and therefore his view was obscured by the door which also obscured § 87(2)(b)'s view.

Lt. Tovar recounted that once he brought § 87(2)(b)'s arms behind her back, he realized he did not have handcuffs and so asked PO Petersen to help. § 87(2)(b) did not resist being placed in handcuffs. After this, PO Petersen escorted § 87(2)(b) from the doors of the civilian waiting area to the main desk. Lt. Tovar did not observe a group of officers escorting § 87(2)(b) and did not see anyone push her with open palms. Lt. Tovar was not present for the entirety of the

incident following § 87(2)(b)'s apprehension and could not recall what he did when PO Petersen brought § 87(2)(b) to the main desk beyond that he did not go with her to the desk.

Sgt. Farid recounted that he did not see the officers place § 87(2)(b) in handcuffs and did not have a clear sightline to her when this took place. Sgt. Farid did not see officers use open palms to push § 87(2)(b) against the desk, nor did he observe officers push § 87(2)(b) in any capacity during the incident.

PO Matson's and PO Petersen's BWC videos (BR01-BR02) begin at approximately the same point during the incident, at which time PO Gilmore, PO Mavridis, PO Petersen, and PO Matson hold onto § 87(2)(b) as they bring her arms behind her back and handcuff her. § 87(2)(b) does not appear to be physically resisting. In both videos, § 87(2)(b) and the officers stand beside the reception desk. § 87(2)(b) stands very close to the edge of the reception desk, and the front of her body appears to make incidental contact with the desk during the brief handcuffing process. After the officers finish placing § 87(2)(b) in handcuffs, at 00:25 in PO Petersen's BWC video, PO Petersen escorts § 87(2)(b) to the main desk located deeper inside the stationhouse. PO Borik's BWC video does not begin until § 87(2)(b) has already arrived at the main desk. None of the BWC videos appears to show the officers pushing § 87(2)(b) against a desk as she described.

Patrol Guide Procedure 221-01 states that officers may use force when it is reasonable to place a person in custody. Any use of force must be reasonable under the circumstances (BR11).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation (F) Abuse of Authority: Sergeant Kappa Farid threatened to arrest

§ 87(2)(b)

§ 87(2)(b) recounted that at some point following § 87(2)(b)'s apprehension, she saw Sgt. Farid, who came in and out of the civilian waiting area several times. § 87(2)(b) told Sgt. Farid that § 87(2)(b) had been arrested and that she did not know what to do. Sgt. Farid said, "You'd better leave. Otherwise, you'll be arrested as well." § 87(2)(b) did not want to leave because she had many of § 87(2)(b)'s belongings. Sgt. Farid asked § 87(2)(b) whether she had a driver's license and told her that she could drive § 87(2)(b)'s car. § 87(2)(b) replied that she did not have a license and could not leave. Shortly after Sgt. Farid first spoke with § 87(2)(b) he returned to the civilian waiting area and again told her that she should go, otherwise she would be arrested. § 87(2)(b) asked Sgt. Farid how she could go when she did not have a license and still had § 87(2)(b)'s belongings. Sgt. Farid told § 87(2)(b) that § 87(2)(b) would not be released that day. However, after two hours, the officers released § 87(2)(b) was not arrested or issued any summonses.

§ 87(2)(b) recounted that, to his knowledge, no one asked § 87(2)(b) to leave the stationhouse, nor did she complain that she had been threatened with arrest. As noted above, § 87(2)(b) does not understand English. § 87(2)(b) told § 87(2)(b) that she felt that she had been treated unfairly by the officers, but she did not explain what she meant by this.

Sgt. Farid recounted that by the time Lt. Tovar apprehended § 87(2)(b) he was working in his assignment at the main desk. Sgt. Farid denied having any interactions with § 87(2)(b) and going to the civilian waiting area. Sgt. Farid could not remember if anyone asked § 87(2)(b) to leave the stationhouse. He denied hearing anyone threaten to arrest her if she did not leave. He never observed § 87(2)(b) committing any arrestable offense.

Lt. Tovar recounted that he could not remember where § 87(2)(b) was following § 87(2)(b)'s apprehension. After § 87(2)(b) was booked and taken to the cell, Lt. Tovar had no further interactions with § 87(2)(b) or the other civilians. Lt. Tovar did not learn of § 87(2)(b) or § 87(2)(b) interacting with officers. Lt. Tovar did not know if anyone told § 87(2)(b) that she would be arrested if she did not leave. Lt. Tovar did not direct any officer to instruct § 87(2)(b) to leave on threat of arrest.

The BWC videos only capture § 87(2)(b)'s apprehension up to the point when officers escort her to the holding cells. They do not capture any interactions between any officer and § 87(2)(b).

§ 87(2)(b), § 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b)
- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR13).
- Lt. Tovar has been a member of service for 12 years and has been a subject in four CCRB complaints and eight allegations, none of which was substantiated. Lt. Tovar's CCRB history does not reflect any apparent pattern pertinent to this investigation.
- PO Gilmore has been a member of service for 15 years and has been a subject in one CCRB complaint and one allegation, which was not substantiated. PO Gilmore's CCRB history does not reflect any apparent pattern pertinent to this investigation.
- PO Mavridis has been a member of service for 13 years and this is the first CCRB complaint to which he has been a subject.
- PO Petersen has been a member of service for two years and has been a subject in one CCRB complaint and one allegation, which was not substantiated. PO Petersen's CCRB history does not reflect any apparent pattern pertinent to this investigation.
- Sgt. Farid has been a member of service for 20 years and has been a subject in 14 CCRB complaints and 24 allegations, three of which were substantiated:
 - Case 200302738 involved a substantiated allegation of refusal to provide name/shield number against Sgt. Farid. The Board recommended Command Discipline and the NYPD imposed Instructions.
 - Case 201506660 involved a substantiated allegation of use of pepper spray against Sgt. Farid. The Board recommended Command Discipline B and the NYPD imposed Formalized Training.
 - Case 201906078 involved a substantiated allegation of failure to obtain language interpretation services against Sgt. Farid. The Board recommended Formalized Training. The CTS does not yet indicate what discipline the NYPD imposed.
 - Sgt. Farid's CCRB history does not reflect any pattern pertinent to this investigation.

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
 - § 87(2)(b) filed a Notice of Claim with the City of New York claiming extensive and severe personal injuries, conscious pain and suffering, severe psychological injuries, extreme humiliation, reputational harm, and legal expenses, and did not specify a specific amount of money in redress (BR14).
 - According to the Booking and Arraignment Disposition System, § 87(2)(b) and § 87(2)(b) have no history of convictions in New York City.
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Squad No.: 5

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date
Squad Leader:	<u>Daniel Giansante</u>	<u>IM Daniel Giansante</u>	<u>September 9, 2020</u>
	Signature	Print Title & Name	Date
Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date